

Date: 5/3/10

ORDERED
 Shira A. Scheindlin
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05/03/2010 04:04 PM

To

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Subject Denney et al. vs. Jenkins & Gilchrist et al. -- Request for
 Approval of a Supplemental Distribution

Docket No. 03 Civ. 5460 (SAS)

Dear Judge Scheindlin,

I write to request your authority to make a \$5 million supplemental distribution from the Settlement Fund in the above matter to the claimants previously deemed eligible for payment.

Here is some background:

As of now, the below co-Special Masters have authorized, with Your Honor's approval, two distributions from the Settlement Fund in this matter. As a result of these distributions, over 500 claimants have received 26 – 27 % of the amounts they expended that was deemed eligible for reimbursement. (As the Court likely remembers, each eligible claimant was to reimbursed on a pro-rata basis for the amounts paid to Jenkins & Gilchrist in fees and for a portion of the amounts paid to the taxing authorities in penalties.)

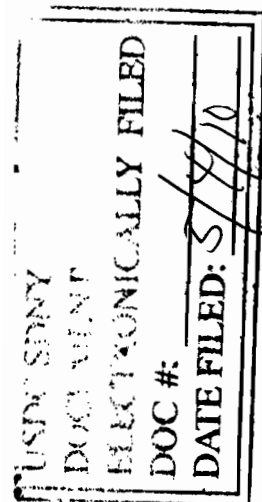
As of now, we have approximately \$9.6 million left in the Settlement Fund.

There are about 40 reserved claims. These are the claims in which there has not been a final action by either the IRS and/or state taxing authority or by the courts, as to whether the tax shelter strategy utilized by the claimant will be disallowed. (If the tax shelter strategy is not disallowed, the claimant would not be eligible for payment by the Settlement Fund.) Garden City Group, the administrator of the Settlement Fund, has estimated that if all these claims are deemed eligible, we would need between \$3 – 4 million to pay these claims using the same parameters for payment as to which the other eligible claimants have been paid. For some of the reserved claimants, we have a very precise view of how much they would receive once they are deemed eligible; for others, the estimate is less precise.

Under the above circumstances, the co-Special Masters feel comfortable paying out \$5 million. The Garden City Group estimates that this payout would result in each eligible claimant receiving approximately 2.3% more of the eligible claim amount, such that the total pay-out would be about 29% of the eligible claim amount. By paying out \$5 million now, we would have more than enough left in the Settlement Fund for the reserved claims, even if 100% of them are deemed eligible for payment at 100% of the claimed amount.

We have given prior notice to all interested counsel, including Class Counsel, counsel to Jenkins, counsel to the individual defendants and counsel to the insurers for the defendants. No one has objected or raised a concern about a plan to pay out the additional \$ 5 million.

Please let me know if you have any questions or concerns about the above. Otherwise, we ask that you formally approve this request either by endorsing this email or by issuing an order.



Respectfully,

Hon. Michael J. Dontzin (Retired)
Michael D. Young, Esq.
Co-Special Masters

DATED: New York, New York
May 2, 2010

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Mediator & Arbitrator
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